

1 AN ACT
2 RELATING TO THE ENVIRONMENT; AMENDING A SECTION OF THE
3 HAZARDOUS WASTE ACT TO PROVIDE FOR A HAZARDOUS WASTE PERMIT
4 MANAGEMENT FEE.

5
6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

7 Section 1. Section 74-4-4.2 NMSA 1978 (being Laws 1981
8 (1st. S.S.), Chapter 8, Section 6, as amended) is amended to
9 read:

10 "74-4-4.2. PERMITS--ISSUANCE--DENIAL--MODIFICATION--
11 SUSPENSION--REVOCATION.--

12 A. An application for a permit pursuant to the
13 Hazardous Waste Act shall contain information required
14 pursuant to Section 74-4-4.7 NMSA 1978 or to regulations
15 promulgated by the board and shall include:

16 (1) estimates of the composition, quantity
17 and concentration of any hazardous waste identified or
18 listed under Subsection A of Section 74-4-4 NMSA 1978 or
19 combinations of any hazardous waste and other solid waste
20 proposed to be disposed of, treated, transported or stored
21 and the time, frequency or rate at which the waste is
22 proposed to be disposed of, treated, transported or stored;
23 and

24 (2) an identification and description of,
25 and other pertinent information about, the site where

1 hazardous waste or the products of treatment of hazardous
2 waste will be disposed of, treated, transported to or
3 stored.

4 B. Hazardous waste permits shall require
5 corrective action for all releases of hazardous waste or
6 constituents from any solid waste management unit at a
7 treatment, storage or disposal facility seeking a permit
8 under this section.

9 C. The department shall provide timely review on
10 all permit applications. Upon a determination by the
11 secretary that the applicant has met the requirements
12 adopted pursuant to Section 74-4-4 NMSA 1978, the secretary
13 may issue a permit or a permit subject to any conditions
14 necessary to protect human health and the environment for
15 the facility.

16 D. The secretary may deny any permit application
17 or modify, suspend or revoke any permit issued pursuant to
18 the Hazardous Waste Act if the applicant or permittee has:

19 (1) knowingly and willfully misrepresented
20 a material fact in the application for a permit;

21 (2) refused to disclose the information
22 required under the provisions of Section 74-4-4.7 NMSA 1978;

23 (3) been convicted in any court, within ten
24 years immediately preceding the date of submission of the
25 permit application, of:

1 (a) a felony or other crime involving
2 moral turpitude; or

3 (b) a crime defined by state or
4 federal statutes as involving or being in restraint of
5 trade, price-fixing, bribery or fraud;

6 (4) exhibited a history of willful
7 disregard for environmental laws of any state or the United
8 States;

9 (5) had any permit revoked or permanently
10 suspended for cause under the environmental laws of any
11 state or the United States; or

12 (6) violated any provision of the Hazardous
13 Waste Act, any regulation adopted and promulgated pursuant
14 to that act or any condition of a permit issued under that
15 act.

16 E. In making a finding under Subsection D of
17 this section, the secretary may consider aggravating and
18 mitigating factors.

19 F. If an applicant or permittee whose permit is
20 being considered for denial or revocation, respectively, on
21 any basis provided by Subsection D of this section has
22 submitted an action plan that has been approved in writing
23 by the secretary, and plan approval includes a period of
24 operation under a conditional permit that will allow the
25 applicant or permittee a reasonable opportunity to

1 demonstrate its rehabilitation, the secretary may issue a
2 conditional permit for a reasonable period of time. In
3 approving an action plan intended to demonstrate
4 rehabilitation, the secretary may consider:

5 (1) implementation by the applicant or
6 permittee of formal policies;

7 (2) training programs and management
8 control to minimize and prevent the occurrence of future
9 violations;

10 (3) installation by the applicant or
11 permittee of internal environmental auditing programs;

12 (4) the applicant's release or the
13 permittee's release subsequent to serving a period of
14 incarceration or paying a fine, or both, after conviction of
15 any crime listed in Subsection D of this section; and

16 (5) any other factors the secretary deems
17 relevant.

18 G. Notwithstanding the provisions of Subsection
19 D of this section:

20 (1) a research, development and
21 demonstration permit may be terminated upon the
22 determination by the secretary that termination is necessary
23 to protect human health or the environment; and

24 (2) a permit may be modified at the request
25 of the permittee for just cause as demonstrated by the

1 permi ttee.

2 H. No ruling shall be made on permit issuance,
3 major modification, suspension or revocation without an
4 opportunity for a public hearing at which all interested
5 persons shall be given a reasonable chance to submit data,
6 views or arguments orally or in writing and to examine
7 witnesses testifying at the hearing; provided, however, that
8 the secretary may, pursuant to Section 74-4-10 NMSA 1978,
9 order the immediate termination of a research development
10 and demonstration permit whenever the secretary determines
11 that termination is necessary to protect human health or the
12 environment and may order the immediate suspension or
13 revocation of a permit for a facility that has been ordered
14 to take corrective action or other response measures for
15 releases of hazardous waste into the environment.

16 I. The secretary shall hold a public hearing on
17 a minor permit modification if the secretary determines that
18 there is significant public interest in the minor
19 modification.

20 J. The board shall provide a schedule of fees
21 for businesses generating hazardous waste, conducting
22 permitted hazardous waste management activities or seeking a
23 permit for the management of hazardous waste, to be
24 deposited to the credit of the hazardous waste fund,
25 including but not limited to:

1 (1) a hazardous waste business fee
2 applicable to any business engaged in a regulated hazardous
3 waste activity, which shall be an annual flat fee based on
4 the type of activity;

5 (2) a hazardous waste generation fee
6 applicable to any business generating hazardous waste, which
7 shall be based on the quantity of hazardous waste generated
8 annually; however, when any material listed in Paragraph (2)
9 of Subsection K of Section 74-4-3 NMSA 1978 is determined by
10 the board to be subject to regulation under Subtitle C of
11 the federal Resource Conservation and Recovery Act of 1976,
12 the board may set a generation fee under this paragraph for
13 that waste based on its volume, toxicity, mobility and
14 economic impact on the regulated entity;

15 (3) a hazardous waste permit application
16 fee, not exceeding the estimated cost of investigating the
17 application and issuing the permit, to be paid at the time
18 the secretary notifies the applicant by certified mail that
19 the application has been deemed administratively complete
20 and a technical review is scheduled; and

21 (4) an annual hazardous waste permit
22 management fee based on and not exceeding the estimated cost
23 of conducting regulatory oversight of permitted activities." =



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